United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7380

United States Court of Appeals

FOR THE SECOND CIRCUIT

In the matter of the Complaint of Singapore Navigation Company, S.A. as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co. Ltd. and China Overseas Navigation Co. Ltd., Plaintiffs, for exoneration from or limitation of liability.

SINGAPORE NAVIGATION COMPANY, S.A., CHINA MARINE INVESTMENT CO. LTD., CHINA OVERSEAS NAVIGATION CO. LTD.,
Plaintiffs-Appellants,

—against—

MEGO CORP., *et al.*, JOSEPH MARKOVITS, *et al.*, UNITY SEWING SUPPLY CO., *et al.*, INTERNATIONAL SEAWAY TRADING CORP., *et al.*, KATONE CORP., *et al.*, SPARTAN INDUSTRIES, *et al.*, ALSTER IMPORT CO., LO-E MANUFACTURING CORP.,
Cargo Claimants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT BRIEF ON BEHALF OF CERTAIN CARGO CLAIMANTS-APPELLEES

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The Issue Presented For Review

Does a shipowner who personally orders an unreasonable geographical breach of the contract of carriage by violating a direction for a specific and feasible port of destination retain the benefits of the Carriage of Goods by Sea Act and the Limitation of Liability Act, when his personal violation causes damage to cargo?

Statement of the Case

This is an appeal by plaintiffs-appellants, Singapore Navigation Company, S.A., China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd. from a judgment of the District Court for the Southern District of New York granting cargo interests a full recovery for damages resulting from the stranding of the S.S. SINGAPORE TRADER in a dangerous stretch of the St. Lawrence River near Clayton, New York.

The action was brought by the owners and managers of the ship for limitation of liability and/or exoneration from liability under 46 U.S.C. §183 and the Carriage of Goods by Sea Act 46 U.S.C. §1300 et seq.

The vessel, laden with general cargo primarily Christmas goods, sailed from Hong Kong on August 22, 1971 bound for New York. At the time of sailing there was a strike of longshoremen on the West Coast of the United States and a similar strike on the East Coast was anticipated. Since a strike on the East Coast would have made impossible the unloading of the ship at New York, the port of destination, the parties placed a stamp on the face of each bill of lading which read:

> "ALL USA CARGO WILL BE DISCHARGED AT THE NEAREST NON-U.S. PORT(S) IN EVENT OF THE LONGSHOREMEN STRIKE AT THE U.S. EAST COAST CONTINUES AND CARGO FROM SUCH DISCHARGING PORT(S) TO BILL OF LADING DESTINATIONS ARE AT THE COST AND RISK OF CARGO."

All parties agree that the nearest non-U.S. ports to New York are those Canadian ports on the St. Lawrence River,

such as St. John's, Halifax, Quebec, Montreal, Valleyfield, etc.

The ship arrived in New York on September 27, 1971. On September 28, 1971 she commenced discharging, which was interrupted on October 1, 1971 by a strike.

The shipowner, after a cursory investigation of a few of the Canadian ports, personally ordered the ship to sail past all of the nearest non-U.S. ports and head for Detroit. After passing Valleyfield, she struck a rock causing great loss to and delay of the cargo.

Relying on the terms in the stamp on the face of the bill of lading, Judge Brieant held the plaintiffs guilty of an unreasonable geographic deviation from the contract of carriage. He specifically found that discharge at Valleyfield was commercially feasible (119a), safe and suitable (120a) and that the owner's sending the ship to Detroit was at least, in part, for his own economic convenience and was a unilaterial decision (102a, 115a-116a).

These findings are fully supported by the record.

Judge Brieant found privity because the shipowner personally ordered the deviation and, therefore, held plaintiffs were liable to claimants for full damages without any limitation of liability. The opinion of Judge Brieant is reported at (SDNY) 1975 AMC 875 (not officially reported).

Statement of the Facts

Mr. T.Y. Lin, a Chinese Shipping entrepreneur decided in June of 1971 to enter the liner trade between the Far East and United States East Coast ports. In that month he formed the necessary paper corporations with 98 percent interest in himself (Lin 42) and purchased the S.S.

SINGAPORE TRADER. Ownership was put under appellant, Singapore Navigation Co. S.A. (98 percent owned by Mr. Lin); the operating company was appellant, China Marine Investment Co., Ltd. (Lin was managing director and majority stockholder) (Lin 41); appellant, China Overseas Navigation Co. Ltd., was managing agent (55 percent owned by Lin) (Lin 42).

The instant voyage was Lin's first to the United States. Because of engine trouble and a typhoon at Hong Kong the ship was delayed on departure and arrived in New York well behind schedule.

At the time the SINGAPORE TRADER was loading, there was already a strike of longshoremen on the West Coast of the United States and a strike of longshoremen on the East Coast was anticipated.

Since a strike on the East Coast would have made impossible the unloading of the ship at New York, the port of destination, the parties placed a stamp on the face of the bill of lading, which reads:

> "ALL USA CARGO WILL BE DISCHARGED AT THE NEAREST NON-U.S. PORT(s) IN EVENT OF THE LONGSHOREMEN STRIKE AT THE U.S. EAST COAST CONTINUES AND CARGO FROM SUCH DISCHARGING PORT(s) TO BILL OF LADING DESTINATIONS ARE AT THE COST AND RISK OF CARGO."

With this specific agreement in every Contract of Carriage, the ship sailed via the Panama Canal for New York where she arrived on September 27, 1971. On September 28, 1971 she commenced discharging her cargo. She had discharged about 1869 tons of cargo, all or parts of several bills of lading, when the strike commenced on October 1, 1971. The strike did not come as a surprise.

The carrier's agent for North America, Gannet Freighting, Inc. alleged through Mr. Herlihy that it made inquiries as to whether it would be possible to discharge the SINGAPORE TRADER in an East Coast Canadian port. Mr. Herlihy said he contacted everybody he could think of in Canada to put the ship there (174a-175a). He says, "I called agents and stevedores in Canada." (173a.) But, the truth is that it was Colley Motorships which did the checking (174a).

The deposition of Colley Motorships, by Mr. Honegger, a vice-president, indicates that Herlihy never called to inquire, for the witness who spoke with Herlihy daily on various matters could not recall Herlihy inquiring on behalf of the SINGAPORE TRADER (300a, 314a, 326a).

And neither Honegger nor Colley Motorships investigated the Eastern Canadian ports on behalf of the SINGAPORE TRADER (Honegger, passim (289a et seq.)) even though they were the nearest non-U.S. ports (316a).

The fact appears to be that, without any serious investigation, Herlihy recommended to Lin that the ship proceed to Detroit (277a) and Lin, the President of the Shipowning Company and the other involved companies, *so ordered.* (See Appendix B to this brief.) Lin, who controlled the ship completely by phone and telex from Hong Kong, failed to contact the Canadian ports. The reason was that Detroit represented a financial saving to Mr. Lin. In a telex dated October 6, 1971 from Herlihy to Lin, it is set forth:

> "WE BELV NET RESULT WILL BE TO YOUR BENEFIT FINANCIALLY. WE HV EXPLAINED SITUATION TO MR. STIFF AND MR. SHEN, WHO BOTH AGREE BEST PROCEDURE." (See Appendix A to this brief.)

Mr. Shen was Mr. Lin's personal representative in New York (Lin p. 32).

Unfortunately, no one asked permission from the cargo owners, many of whom needed these goods for the Christmas season but were kept ignorant until the ship had long since sailed (160a, 163a).

The SINGAPORE TRADER sailed by Halifax and Quebec City. It entered Montreal for one day to be fitted for the Seaway, it passed Valleyfield, and then on October 15, 1971 on the way to Detroit it hit a rock at full speed with disastrous results for the cargo owners who could only re-read their original bills of lading in stunned misbelief. The cargo was removed from the ship by salvors and taken to New York City at the expense of cargo owners. Much cargo was lost and damaged due to the discharge *in distress.*

POINT I

Plaintiffs-Appellants Were Guilty of a Geographical Deviation.

It is clear, *beyond cavil,* that this shipowner deviated from the contract of carriage. When the anticipated strike of longshoremen occurred, the stamp on the face of the bill of lading came alive and replaced New York with the alternative destination of the "nearest non-U.S. port(s)". (361a-362a). Until plaintiffs proved that it was not possible to discharge at any of the Eastern Canadian ports, plaintiffs were duty-bound to discharge the SINGAPORE TRADER at a Canadian port (317a-318a, 364a).

To dispatch the ship to Detroit was a breach of a specific stamp on the face of the bill of lading. There is no need to employ a magnifying glass to study the "Liberties"

Clause buried in the back of the bill of lading; *it is inapplicable.*

Plaintiffs' own agents in Canada, who supposedly made an investigation, have testified that with the stamp on the bill of lading, the SINGAPORE TRADER was a ship destined for a Canadian Port (317a-318a, 364a). They both agreed it should, at least, have gone into Quebec (328a-330a, 388a).

While it was plaintiffs' burden to prove it could not feasibly discharge at Canadian ports, claimants nevertheless have proved the SINGAPORE TRADER could have been discharged at Valleyfield, Montreal, Quebec, Halifax, Sydney, Nova Scotia, Port Elford, Levis and Three Rivers (250a). Several of these ports do not use ILA labor. There are other ports which were probably available, but the first four are those from which claimants obtained live testimony.

Valleyfield

Judge Brieant affirmatively found, based upon the testimony, that the SINGAPORE TRADER could feasibly have been discharged at Valleyfield, Canada.

This is a non-ILA port within shouting distance of Montreal. Mr. Milton, the manager, testified that he could have accommodated the SINGAPORE TRADER; that he had two covered sheds which were large enough to handle the SINGAPORE TRADER's cargo and which were substantially empty throughout October, 1971 (440a et seq.). Valleyfield also had sufficient truck and railroad facilities including a Penn Central railroad connection. While Mr. Paulsen, the ship's agent, said he called Mr. Milton, the latter did not remember any such call (442a) but did recall

a talk with Paulsen concerning another strike-bound ship which Mr. Paulsen also acted as agent for, the S.S. DAGRUN, which was discharged at Valleyfield (444a). The SINGAPORE TRADER sailed past Valleyfield on the way to Detroit.

Valleyfield being perfectly suitable, and the contract of carriage, by a specific mandatory stamp on its face calling for discharge there, the appellants' failure to do so and thus to expose the cargo to the dangers of further river transit was a deviation.

Appellants rely heavily on clause 5 of the bill of lading which reads in part (74a).

> "5 If the loading carriage discharge or delivery is impeded or if there are reasonable grounds for anticipating that the same is *or threatens to be impeded by the imminence outbreak or existence of* * * * *strikes* * * * *or by absence from any cause of facilities for loading, discharge or delivery* the carrier and/or his agents and/or the master may (if in his or their uncontrolled discretion he or they think it advisable) at any time before or after the commencement of the voyage abandon or suspend the voyage, alter or vary or depart from the proposed or advertised or agreed or customary route * * * Anything done or not done by reason of or in compliance with the provisions herein before contained or any of them shall be deemed to be within the contract voyage. * * * *" (Emphasis added.)

Even if this clause remained viable, it would not apply since discharge at Valleyfield was not impeded, nor was a lockout or strike anticipated there, nor was there a lack of facilities.

This Court has recently clarified the limitations of the so-called "Liberties clauses". *Hellenic Lines* v. *U.S.A.* (2d

Cir. 1975), 512 F.2d 1196, 1975 A.M.C. 698. As held at 512 F.2d pp. 1206-1207:

> "*Yet the clear plan of COGSA is to differentiate between reasonable deviations, which are without legal consequences, and unreasonable deviations, which entail serious ones.* (emphasis supplied) Any such clause must be construed in light of the carrier's basic duty, §3(2), to 'properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried' *in line with the agreement of the parties.* (Emphasis supplied.) 'Thus, it would appear that, even under such a voyage clause . . . , a deviation occurs when the liberties conferred by the clause are pushed beyond reasonableness, *in the light of the carrier's duties to cargo.*' Gilmore & Black, supra, §3-40, at p. 178 (emphasis supplied by Court). And, under the circumstances here, the advertising cannot bear the weight Hellenic would place upon it; by the same token Hellenic would have been free to include Salonika as a port of call—something clearly contrary to the understanding of the parties."

It was appellants' duty to discharge at the nearest non-U.S. port or ports. The Liberties clause was subject to that basic duty.

POINT II

Plaintiffs-Appellants Failed to Prove the Deviation Was Reasonable; This, With the Shipowner's Privity, Removes the Benefits of Limitation of Liability.

To violate a specific direction in a bill of lading is automatically unreasonable, *The Lafcomo,* (SDNY 1943) 49 Fed. Supp. 559, aff'd., 2 Cir., 138 Fed. 2d 907. We have here a simple case of a New York agent blinded by a

friendship with marine people in Detroit, anxious to be a hero by saving the shipowner some money on his first assignment for him and more to come.

We have an inadequate investigation by the Montreal agents who made invalid assumptions about some ILA and non-ILA ports; didn't call the proper people and didn't really check at all available ports. And they at no time told anyone in Canada that the Eastern Canadian ports were alternate discharge ports on all the bills of lading.

The duty of Singapore Navigation Company, S.A. and Mr. Lin, its president, to discharge at the nearest non-U.S. port or ports was a non-delegable duty.

Mr. Lin cannot be heard to say he hired respectable people, who erred, and, therefore, he is not responsible. Firstly, he took away from the Master of the ship all the judgment the situation would ordinarily have called upon him to exercise (523a). He did not even tell the Captain of the impending strike (522a) or the stamp on the bill of lading (522a). Mr. Lin was on the phone and telex frequently with the Master, with Herlihy and others; he was a part of the entire decision-making process. *And he personally ordered the ship to deviate away from the agreed destination* (175a-176a, 278a).

Judge Brieant rightly found that "the purpose and meaning of the stamped clause was not to add to the discretions and power of the Master under the liberties clause (§5 of the Bill of Lading) [as argued by appellants], but rather to state an essential element of the contract of carriage of seasonal goods."

He found further as facts that "All parties knew that the goods were wanted for the Christmas market, and that the purpose of the contract of carriage would be frustrated if the cargo became strikebound. Accordingly, the stamped

clause provides that the cargo 'will be discharged at the nearest non-U.S. port(s).' These are words of performance and agreement. The clause does not say that the cargo 'may in the discretion and judgment of the Master be discharged in a non-U.S. port, or any port permissible for discharge within the meaning of clause 5 of the Bill of Lading.' It could have said so, and perhaps it should have, but we may not rewrite the contract of the parties."

These findings are fully supported by the record and the conclusions the District Court drew from them are in accordance with long-standing law on the subject.

While, by way of dictum, this Court refused to extend the doctrine of quasi-deviation any further than wrongful on-deck stowage, it affirmed the classic nature of an unreasonable geographical deviation and its serious effect on the contract in all major maritime nations. *Iligan Integrated Steel Mills, Inc.* v. *SS JOHN WEYERHAEUSER* (2 Cir. 1974) 507 F. 2d 68, 70-71.

Aside from that, *Weyerhaeuser* has no factual relevance to this case.

The law setting forth the dramatic results of an ocean carrier's unilateral rewording of a contract of carriage is by now a keystone of the maritime law.

The port of destination for claimants' cargoes was New York but if the strike on the United States East Coast continued the plaintiffs were bound by the special stamp on the fact of the bill of lading to discharge the cargo at the "nearest non-U.S. port(s)".

To everyone involved, this meant Valleyfield, St. Johns, Halifax, Quebec, Montreal, etc. There are some faint references in the testimony that investigation disclosed that those ports would not or could not take the SINGA-

PORE TRADER, but the fact is that no investigation at all was conducted; *the ship could have been discharged at Valleyfield, Halifax, Quebec or Montreal* (Schnare, Walsh, Cote, Kerr, Cadotte, Milton).

Despite this, Mr. Lin, the plaintiff's President, personally ordered the ship to Detroit, in violation of claimants' expectations. When she passed the Eastern Canadian ports she was, from then on, operating "on her own" carrying claimants' cargoes through unauthorized waters and engaging in a classic case of geographical deviation.

This doctrine originated in the law governing marine hull insurance policies. If the insured ship strayed from the contemplated voyage, the policy no longer covered on the theory that she either 1) had departed so far from the contemplated route that she was on a different voyage or 2) the change in route had varied the risks insured against.

Case by case the doctrine was extended to charter parties and bills of lading on the same theory, i.e., if the carrier goes beyond the geographic agreement made with cargo, he loses the contract and becomes an insurer of the safety of the cargo. He has taken the cargo to a place never agreed to and must deliver it safely or pay the full damages.

A leading case often quoted, is *The Indrapura* (D.C. Ore. 1909), 171 Fed. 929, where the Court teaches us on pp. 931-2:

> "The term 'deviation' in the law of shipping has at the present day a varied meaning and wide significance. It was originally employed, no doubt, for the purpose its lexicographical definition implies, namely, to express the wandering or straying of a vessel from the customary course of voyage; . . . but because the risk

> of shipment was changed or increased, and became, in effect, not the same as the one with reference to which the parties contracted. 3 Kent's Com. 315;"

Plaintiffs have in this case reverted 200 years to the original foundations of the doctrine of deviation. *G. W. Sheldon & Co.* v. *Hamburg Amerikanische et al.* (3 Cir. 1928), 28 Fed. 2d 249. See *Smith, Kirkpatrick & Co.* v. *Colombian S.S. Co.* (5 Cir. 1937), 88 Fed. 2d 392.

In *Calderon* v. *Atlas SS Co.* (SDNY 1894), 64 Fed. 874, aff'd 2 Cir., 69 Fed. 574, aff'd 170 U.S. 272, J. Brown held an overcarriage of cargo past the port of destination to be a deviation because:

> "* * * she continued the carriage of these particular goods long beyond what the contract allowed, exposing them to three times the sea perils contemplated * * *"

Of course, if the carrier can justify the deviation then he rehabilitates his position and the extreme insurer status is not visited upon him. But the burden is his to prove, i.e., he must prove that it was not possible for him to comply with the agreed port or ports of destination and it was necessary for him to take the cargo where he took it.

As stated in *United States Shipping Board* v. *Bunge and Born, Ltd.*, Vol. 42 The Times Law Reports 174:

> "My Lords, upon the facts it appears to me that when once deviation has been established, as it clearly has in the present case, it becomes incumbent upon the owners to show that that deviation was one which in all the circumstances of the case was justified. * * *"

"The next question is whether the deviation so proved is excused", Judge L. Hand in *Farr* v. *Hain SS Co.* (2 Cir. 1941), 121 Fed. 2d 940, 944.

In *The Indrapura, supra,* at p. 933, the Court holds:

> "* * * Whether there was an increase of risk or not the elevation of the ship out of its natural element after the merchandise was received for transportation was an act beyond question not contemplated by the shipper, and was assuredly a breach of the implied contract. * * * and the only thing that would or could justify a deviation from this course is an absolute maritime exigency. * * *" (p. 933)

Most of the cases involving geographical deviation required the Court to analyze the "usual and customary" routes between two ports. The clearest for decision are those where the carrier simply ignored a specific provision of the contract.

As an example of how strict the bill of lading terms covering the port of destination are construed, the Court in *The Pelotas* (5 Cir., 1933), 66 F.2d 75, 1933 AMC 1188, 1193-1194, holds:

> "In support of its second main contention, that the Pelotas did not deviate but followed the route declared in the bills of lading, appellant relies solely on clause 2, above quoted, concerning the master's authority to proceed with the voyage 'according to his itinerary and ports of call.' The argument is that the owner's written order to call at the ports of La Guaira and Vera Cruz was incorporated in the bills of lading by reference, with the result that constructive notice was given of the voyage intended to be undertaken. The bills of lading in the first place named the port of destination, and then afterwards in clause 2 provided that, if by reason of heavy weather or other enumerated causes it should be impossible to discharge cargo at the port

of destination, the master should be authorized to proceed according to his itinerary and ports of call. It seems clear to us that until the ship arrived at the first port of destination named in the bills of lading, the question of the authority of the master to proceed to other ports could not arise. As in this case New Orleans was the only port of destination thus named, the ship was bound to proceed there and the master was without authority to go to any other port for the purpose of delivering cargo until after it had become impossible by reason of one or more of the enumerated causes to discharge cargo at New Orleans. In our opinion clause 2 refers to the port of destination, the itinerary, and the ports of call shown by the bills of lading themselves, and not to some or any other port of destination or call, or itinerary designated in orders issued by the owner. To give that clause the construction contended for by appellant would be to authorize the shipowner to order any deviation at will so long as he did it in writing, and would deprive the holder of a bill of lading or owner of cargo of the undoubted right to insist that the vessel proceed according to contract to the port of destination. Such a construction is clearly untenable."

The author of Tetley, *Marine Cargo Claims,* on p. 209, states it clearly:

"In every case of deviation, it is necessary first to determine what the contract of carriage was. The bill of lading, on its face, will normally declare only the ports of loading and discharge; if it should mention a specific route or other ports of call, then, of course, that is, in effect, the route agreed upon. The real contract of carriage is not the bill of lading, which is only the best

evidence of the contract. The real geographical route would probably be found from a study of

a) the customary routes taken by the line in the past,

b) the notices and advertisements before the voyage,

c) the booking-note, and

d) the bill of lading itself."

While the facts are different, the legal theory of *The Lafcomo* (S.D.N.Y. 1943), 49 Fed. Supp. 559, aff'd. 2 Cir. 138 Fed. 2d 907 is instructive in this connection. The bill of lading called for the carrier to cover lily of the valley pips with tarpaulins. It failed to do so.

On an appeal from the Commissioner's report, 64 F. Supp. 529, 531, this Court held:

"Failing to cover the pips with tarpaulins constituted a change in the agreed manner of carriage, as was decided by the District Court, the findings of which were approved by the Circuit Court. Any departure by the carrier from the agreed method of transportation is a deviation releasing the shipper from all limitations upon the carrier's liability under the contract of carriage and entitles him to recover from the carrier full compensation for his loss due to breach of such contract. *The Sarnia* (2 Cir.), 278 F. 459, certiorari denied 258 U.S. 625; *The St. Johns N.F.* (2 Cir.), 280 F. 558, affirmed 263 U.S. 119, 1923 A.M.C. 1131."

Appellants ignore the fact that the SINGAPORE TRADER was at a place hundreds of miles past an authorized port of destination and blindly argue that negligence in navigation caused the damages to cargo and thus seek exoneration. *This they may not do.*

As was held in *Western Lumber Manufacturing Co.* v. *U.S.*, (N.D. Calif. 1925) 9 Fed. 2d 1004, 1006:

> "The goods in each case were delivered in San Francisco, for carriage by one or all of the respondents to a seaport on the Atlantic Coast. They were not delivered at their destination but were in fact lost through an error of navigation upon the coast of Oregon." (p. 1005) "* * * Nor may it any longer be maintained that the master's negligent management of the vessel brings the case within Section 3 of the Harter Act. Judge Partridge's decision to that effect, rendered July 31, 1924 (Max Fass v. U.S. S.B.E.F.C. 9 F. (2d) 1004), not only is the law of this case, but, in my opinion, is sound, for *deviation deprives a carrier of all exemptions, statutory and other.*" (p. 1006) (Emphasis supplied)

In *The Tregenna,* (2 Cir. 1941) 121 Fed. 2d 940, 944, Judge L. Hand held:

> "* * * it is settled that deviation strips the ship of all excuses in her charter-party and imposes upon her at least the liability of a common carrier, i.e., of an insurer. The Willdomino, 272 U.S. 718, The Malcolm, Baxter, Jr., 277 U.S. 323." (p. 944)

The law then is clear that an unjustified deviation will strip a carrier of its usual defenses, i.e., make it an insurer. *Farr* v. *Hain SS Co.,* supra; *Charbonnier* v. *U.S.,* (D.C. S.C. 1929) 45 Fed. 2d 166, aff'd 4 Cir., 45 Fed. 2d 174; *The Malcolm Baxter, Jr.* (1923) 277 U.S. 323; *The Hermosa,* (9 Cir. 1932) 57 Fed. 2d 20.

In *The Pelotas,* supra, at p. 579, the Court held:

> ". . . if the vessel does unjustifiably deviate from her direct course the carrier from that moment on be-

comes the insurer of the goods *and it becomes immaterial how the damages are occasioned.*"

In *the Citta di Messina* (S.D.N.Y. 1909), 169 Fed. 472, 475, this Court holds:

"If therefore, the Messina was guilty of a deviation, it is wholly immaterial whether her stay at Almeria had or had not any casual connection with the rotten onions found on board in New York. If they were sound when the deviation occurred, the ship must answer for their subsequent damage."

Of course, if plaintiffs can prove that the loss *must* have occurred even if there had been no deviation, then and only then is there no causation between the breach and the damage. *Charbonnier* v. *U.S., supra,* at p. 172; *The Hermosa, supra,* at p. 27; Carver *Carriage of Goods by Sea* (10th Ed.). The latter text states on p. 497:

"The principle which appears to have been applied in the latter case is that, the deviation being a wrongful act dehors the contract, the carrier could not be heard to say that it was not the cause of the loss unless he could prove that the loss must have occurred had there been no deviation."

And see Knauth, *Ocean Bills Of Lading* (4th Ed., 1953) where the author quotes *Davis* v. *Garrett* (1830) 6 Bing. 719:

"Deviation of the Master is undoubtedly a ground of action against the owner. We think the real answer is that no wrongdoer can be allowed to apportion or qualify his own wrong unless he can show that the loss would have happened anyway. We cannot but think that the law does imply a duty in the owner of a vessel,

whether a general ship or hired for the special purpose of the voyage, to proceed without unnecessary deviation in the usual and customary course."

Nor will the Limitation of Liability Act (46 USCA Sec. 183) be available to a carrier who personally breaks the contract in such a substantial particular as the port of destination.

In *The Pelotas, supra,* the shipowner personally committed a geographical deviation during which the ship stranded on a reef with consequent serious damage to ship and cargo.

At p. 1192 AMC, the Fifth Circuit holds "A shipowner cannot claim limitation of liability if he orders his ship to deviate, 46 Mason's U.S.C. Sec. 183."

At p. 1193 AMC, the Court holds:

"Upon the exercise by appellees of their right to sue on the contract, the shipowner, having ordered the deviation, and therefore not being entitled to claim limitation of liability, became liable as an insurer; and so it becomes immaterial to inquire whether the goods were lost or damaged because of the unseaworthiness of the ship, errors of navigation, perils of the sea, or other exceptions from liability declared in the bill of lading. Leduc vs. Ward, supra at page 484; Citta di Messina, 169 Fed. 472; Sarnia, 278 Fed. 459, 464."

The law in this Circuit is the same. *The Frederick Luckenbach* (S.D.N.Y. 1926), 15 Fed. 2d 241. See also, *The Flying Clipper* (S.D.N.Y. 1953), 116 Fed. Supp. 386 (J. Weinfeld) for an excellent analysis of the legal theory underlying the results visited upon a deviating carrier. *The Flying Clipper* was followed by the Second Circuit as

recently as 1969 in *The Hong Kong Producer* (2 Cir. 1969) 422 Fed. 2d 7, 18.

Of course, all this is fortified by the undisputed fact that it was Mr. Lin himself, the President of the shipowning corporation, who ordered the deviation (278a, 175a-176a).

If privity be required in a deviation case, which is not all that clear, it is simply not an issue in this case. Just as in *The Pelotas, supra,* the shipowner here was personally involved. This then satisfies the old rule as set forth in *Lord* v. *Goodall SS Co.* (C.E. Calif. 1877) 15 Fed. Cas. 884, 888, 506:

> "As used in the statute, the meaning of the words 'privity or knowledge,' evidently, is a personal participation of the owner in some fault, or act of negligence, causing or contributing to the loss, or some personal knowledge or means of knowledge, of which he is bound to avail himself of a contemplated loss, or of a condition of things likely to produce or contribute to the loss, without adopting appropriate means to prevent it."

We must keep in mind that expansion of the Limitation of Liability statute is viewed, on the highest judicial levels, with disfavor. In *Re Barracuda Corp.* (2 Cir., 1969), 409 Fed. 2d 1013, 1015, where the Court quotes Mr. Justice Black, dissenting in *Maryland Casualty Co.* v. *Cushing,* 347 U.S. 409, 437:

> "Judicial expansion of the Limited Liability Act at this date seems especially inappropriate. Many of the conditions in the shipping industry which induced Congress to pass the Act no longer prevail. And later Congresses, when they wished to aid shipping pro-

vided subsidies paid out of the public treasury rather than subsidies paid by injured persons."

And see *Complaint of Chinese Maritime Trust, Ltd.*, (S.D.N.Y.) 1972 AMC 1478, 1481:

"And of course it is well settled that limitation of liability is an affirmative defense and that defendant [plaintiff, here] has the burden of proving that its officers and managing agents lack privity and knowledge." *Terracciano* v. *McAlinden Const. Co.*, (2 Cir. 1973), 485 F.2d 304, 1973 AMC 2111, 2116.

The master facts then are that Valleyfield, Halifax, Quebec and Montreal were ports to which the ship was duty bound to proceed for discharge. At those ports there was adequate space, facilities and an able and willing labor force and sufficient railroad and trucking services to the United States. Yet the shipowner personally ordered the ship to Detroit, partly for his own financial gain, as was suggested by Mr. Herlihy and as found by the trial court.

Under these facts and applying the law as it has evolved over centuries to the present day, the shipowner is not entitled to exoneration or limitation of liability and he is liable to claimants for the full value of their losses resulting from this unnecessary disaster.

(A) The flaws in appellants' arguments are:

1. They ignore the destination set forth on the face of the Bill of Lading which supersedes the liberties clause; and

2. They would have the shipowner retain a right to rewrite the contract, by choosing his own port of destination.

The example on page 23 of appellants' brief is not helpful to this Court. A condition for the viability of the stamp is continuance of the strike "at the U.S. East Coast." If

Boston or Philadelphia were open, that condition would not be met and the liberties clause would be active. The shipowner would be expected then to discharge at either of those two ports.

None of the cases referred to by appellants are helpful to the decision of this case since in none of them was there, in the bill of lading itself, agreement by the shipowner to go to a particular place in case the original destination were frustrated.

Appellees agree that in those cases the shipowner had a discretion given him by the "liberties clause". Indeed, even without a liberties clause, he would have the right to choose an alternate port as a practical solution, but his decision would still have to be reasonable.

In those cases, the holdings were that there was no deviation. Therefore, how can there be an unreasonable deviation? Disregarding the stamp on this Bill of Lading is itself an unreasonable deviation where the stamp could have been obeyed.

Incidentally, appellants' argument on page 48 of its brief is a clear example of a wrongful interpretation of the dictum of this Court in the *SS JOHN WEYERHAEUSER, supra.* With no proof in this record that the cargo owners' had any insurance, appellants argue that this Court has relieved the shipowner from any adverse results flowing from a wilful and unreasonable geographical deviation because it is better that cargo insurers pay rather than the P & I. Appellants have not advised this Court of the limited P & I coverage which was held by Mr. Lin (approximately $400,000.00) as compared with the amount of damages suffered by cargo (approx. $2,000,000).

Again and in any event, *Weyerhaeuser* is not apposite with this case.

POINT III

Judge Brieant's Findings Are Not "Clearly Erroneous".

Rule 52(a) of the Federal Rules of Civil Procedure for the United States District Courts provides that as to actions tried without a jury:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Trial Court to judge the credibility of the witnesses."

In an often quoted case, Mr. Justice Reed speaking for the United States Supreme Court in the case of *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948) states:

> "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Clearly the trial Court's findings as to the critical facts in this case should not be reversed. Judge Brieant's finding that Valleyfield was safe, suitable and feasible is supported by Mr. Milton's testimony (440a et seq.) and by proof that strike-bound ships of other owners discharged there in October, 1971 at the request of appellants' agent (349a-350a). There is no contrary evidence in the record.

Judge Brieant's finding that there was no waiver of the deviation is also fully supported by the record.

Appellants' reliance upon *Farr* v. *Hain SS Co.* (2d Cir. 1941), 121 Fed. 2d 940 is totally inappropriate. The only resemblance that case bears to the instant matter is that

both involved geographical deviations. In the *Farr* case, which was private carriage under a charter party, with one cargo owner, the Master of the carrying vessel, the SS TREGENNA, deviated from the contract of carriage by omitting a port of call. After some 28 hours sailing time, the Master received instructions to change his course and put into the port of San Pedro de Macoris, the omitted port. The TREGENNA arrived and loaded her cargo of sugar without incident, as she was chartered to do. Cargo interests allowed her to complete her lading without protest or reservation of any rights on account of the earlier deviation. The ship then resumed her voyage but stranded as she left San Pedro de Macoris with substantial cargo damage resulting therefrom. The appellate court reversed the District Court and held for the ship owner. The rationale of that decision was succinctly phrased by Judge Learned Hand at page 944:

> "But if he learns of a deviation while the voyage is in progress, and without protest or reservation of his rights, *allows her to make good her fault*, so far as she can, it is certainly inconsistent with fair dealing for him afterwards to assert that the remainder of the voyage was not performed under the charter, for that will be the owner's ordinary assumption." (Emphasis supplied.)

Clearly, that case is not analogous to the matter at hand where the deviation was continuing, and the shipowner never made good his fault, although there was ample opportunity to do so by putting into and discharging the cargo at either Halifax, Quebec City, Montreal or Valleyfield.

Farr was the single shipper on the M/V TREGENNA and communication between the charterer and shipowner

was not only feasible, but expected, since Farr was to nominate the loading and discharge ports during the voyage. There is absolutely no analogy to the instant case where 500 notices were mailed after the SINGAPORE TRADER left New York bound for Detroit. There is no testimony to whom those notices were sent, but apparently many went to custom brokers or notify parties who would have to communicate with the actual consignees. There is no way of telling when the consignees would have received actual word or even whether they knew of the stamp on the bill of lading.

Even plaintiffs' counsel admits that with a multitude of cargo interests, communication is impractical (188a) and the lower court saw it as totally unfeasible especially where there are negotiable bills of lading (189a).

The strike was anticipated for some time and actually happened at midnight, October 1, 1971. The ship sailed for Detroit on October 8. The notices were not mailed until October 9-10, 1971. Therefore, for at least nine days, the shipowner did not notify the cargo owners. The claimants should not be prejudiced by Gannet's failure to notify them of the intended deviation for this long period of time when an objection might have been effective.

It is admitted that the decision to discharge at Detroit was a unilateral one (176a).

The appellants assail, as clearly erroneous, the finding by the Court below that the deviation to Detroit was, at least, in part for appellants' economic advantage (82a, paragraph 16(j); 102a, paragraph 11; 116a). In so doing, appellants omitted the overwhelming evidence in support of the lower Court's finding. In this regard, we respectfully call to the Court's attention two (2) of the telexes which

form a part of Exhibit 13. Gannet's October 6th, 1971 telex to owners, at paragraphs 5 and 6, stated as follows:

"* * *

THERE WILL BE A SAVING TO YOU ON STEVEDORING ABOUT 5.00 PER MSMT TON, DETROIT STEVEDORE QUOTING DLRS 12.95 ALL PURPOSES, AGAINST NY RATE 18.00. WE ARE STILL TRYING ACCURATELY EST HOW MUCH DISCHARGED AT NY, BUT OUR GUESS AT LEAST 8000 TONS (IF NOT MORE) REMAINING.

THIS SAVING OF ADT 40000 DLRS WILL BE OFF-SET BY COST OF SEAWAY TOLLS, FITTINGS, ETC WHICH WE EST ABT 11000 DLRS. WE BELV NET RESULT WILL BE TO YOUR BENEFIT FINANCIALLY. WE HV EXPLAINED SITUATION TO MR. STIFF AND MR. SHEN, WHO BOTH AGREE BEST PROCEDURE." (See Appendix A of this brief.)

Owner's telex reply, which has also been omitted by appellants, clearly evidenced this appreciation of the economic advantages and did not escape the scrutiny of the trial court. This telex which was also included in Exhibit 13 read in part as follows:

"PLS ADVISE ETA AT DETROIT ALSO ADVISE NAME ADDRESS AND CABLE ADDRESS TELEX NUMBER OF AGENTS AT DETROIT BY TELEX SOONEST

AS ALL BILLS OF LADING CLAUSED WITH A STRIKE CLAUSE THEREFORE WE CONSIDER ANY ADDITIONAL EXPENSES FOR PROCEEDING TO DETROIT FOR DISCHARGING BALANCE CARGO SHOULD BE FOR ACCOUNT

OF CARGO OWNERS/CARGO RECEIVERS AND SUCH 'ADDITIONAL EXPENSES' SHALL INCLUDE:

(1) CANAL TOLLS AND EXPENSES FOR CALLING GREAT LAKE PORTS

(2) BUNKER FUEL OIL CONSUMED FOR EXTRA MILEAGE BETWEEN NEW YORK/DETROIT

(3) CREW WAGES A[illegible]URANCE PREMIUM

(4) AGENTS FEES [illegible]TROIT

(5) AND OTHER ASSOCIATED EXPENSES

* * *" (See appendix B to this Brief).

At this juncture, we would point out to the Court that the shipowner in deviating, clearly relied upon the strike clause stamped upon the face of the bills of lading and in no way acted in reliance on the printed Liberties clause as emphasized by the appellants in their brief.

It is admitted by appellants that they hoped to secure cargo in the Seaway system to carry back to the Far East.

Finally, what could be clearer than Lin's direction in Exhibit D "for (2) thru (5) we suggest that we charge additional freight of US DLS 3.00 per ton from Cargo owners/receivers on any cargoes discharged at Detroit."

POINT IV

Besides Valleyfield, Quebec, Montreal and Halifax Were Feasible and Available Ports for the SINGAPORE TRADER.

Montreal

Mr. Kerr was the General Superintendent of Terminals in Montreal in the Harbour Masters office of the National Harbour Board. No ship can enter Montreal without the permission of his office (459a-460a).

He testified that while there was sufficient pier and empty covered shed space to discharge the SINGAPORE TRADER (464a-466a, 469a, 472a-474a, 490a-491a, 496a), on October 13, 1971, the day she was in Montreal (461a-462a) the agents for the SINGAPORE TRADER did not request a berth to discharge her cargo (462a-463a, (466a). Sheds 3 and 11 were empty (469a, 472a, 473a, 491a) as were other sheds (495a).

Mr. Cadotte was an organizer for the ILA in Montreal in 1971 (397a). He testified that, if requested, he would have had to discharge the SINGAPORE TRADER because he had a contract with the Shipping Federation of Canada and couldn't refuse to handle cargo. He feared an injunction and a fine of $50,000.00 per day (397a-398a, 400a-401a, 424a).

He testified that there would be no question if the bill of lading were marked "via Montreal" (412a) and he said that with the stamp that was on the instant bills of lading he would have had to discharge the cargo (423a-424a). His union checks the bills of lading (399a, 405a).

Of importance, this knowledgeable witness also testified that Hamilton, Toronto, St. John and Halifax handled diverted cargo during the strike (419a).

The SINGAPORE TRADER actually came into Montreal to be fitted for the Seaway, but no one asked the union or the stevedores or the Harbour Board for permission to discharge. Neither Paulsen nor Honegger, the shipowner's Canadian agents, and the only two who allegedly made any calls concerning discharge of the SINGAPORE TRADER in Canada, checked out their own city while the ship was in Montreal (347a, 367a; Honegger, *passim,* 289a et seq.)

Quebec

Mr. Cote was Dock Superintendent for the National Harbour Board in Quebec. He testified that on or about October 13, 1971, Quebec had sufficient physical facilities and covered sheds to discharge the SINGAPORE TRADER (503a). Sheds No. 1, 3, and 4, Wolfe's Cove, and Shed 26, Louise Basin, were available (503a-504a). But no request for a berth was made by the SINGAPORE TRADER (507a, 515a, 516a). Quebec was not congested (512a) because they have more facilities than they need or actually use (514a).

Along with Mr. Cote, the most significant witness is Mr. Walsh, business agent for the ILA in Quebec in October, 1971.

He testified that when the strike happened, his union had a special assembly and *decided to discharge any ship,* if requested (427a, 432a) and they would have discharged the SINGAPORE TRADER, but for the fact that they received no request (427a, 432a). Quebec wasn't very busy in October, 1971 (427a).

Mr. Walsh simply said:

> "Whatever the ILA might think about it, a year ago we had a strike, we were on strike for a month, and

all of the other ports continued working in Canada as well as the United States, and we decided we would carry on the work, in this case, and if the ILA doesn't like it, they can just throw us out."

And they actually did unload so-called "hot" cargo in Quebec at this time (438a).

Halifax

The Halifax Union, over 20 years, through eight or ten strikes in the United States, has never turned a ship away, strike-bound or otherwise, (23[illegible]a-237a). Certainly the ship's agents, who were supposedly consulted, knew the same thing. Was the SINGAPORE TRADER to be the first ship ever refused service in a port where stevedores worked only in the Winter Season and went hungry other times? (239a)

Mr. Quinn, who was an office man and would not know whether New York cargo or diverted ships were being discharged (202a-206a) had no knowledge whether strike-bound ships were discharged in October, 1971 (198a, 201a). He agreed with Mr. Schnare and knows of no ship ever turned away from Halifax during a strike at another port (215a). This, of course, ties in with his testimony, after some hedging, that New York does not order the Halifax union around (220a).

But nevertheless, he would have the Court find that the steamship companies themselves, who want their ships unloaded, would tell the union which ones had been strike-bound (211a-212a). *Incredible!*

From Mr. Schnare we learned that any ship, at least for the last twenty years, could look to Halifax to be dis-

charged, for none have ever been turned away, despite strikes and directives (236a-237a). And this is true even if the ship were strike-bound in another Canadian port (241a). This is common knowledge (241a). The reason is (1) that "We want to live", (239a) and (2) Canadian law does not allow a Canadian stevedore to refuse to work when he is not on strike (241a).

Of course, no question at all arises where Halifax is an optional or an alternative port (243a) and appellees insisted that appellants prove Canadian law forbids amending a ship's stowage plan, which is designed solely for identification of cargo to be discharged, to conform to the bill of lading. They have alleged that it does, but anyone knowledgeable in the shipping industry knows that this assertion is incorrect as the document is meant only for use in identifying cargo to be discharged.

Appellants blandly suggested that for the SINGAPORE TRADER to change her stowage plan in order to discharge at Halifax would be a "criminal act" under United States law. How this Act could apply to a ship entering a Canadian port has not been explained.

Title 18 USC § 496 reads:

> "Whoever *forges, counterfeits* or *falsely alters* any writing made or required to be made *in connection with the entry or withdrawal of imports or collection of customs duties,* or uses any such writing knowing the same to be forged, counterfeited or falsely altered, shall be fined not more than $10,000 or imprisoned not more than three years, or both. June 25, 1948, c. 645, 62 Stat. 711." (Emphasis supplied).

1. If the Master of the SINGAPORE TRADER changed the destination on the stowage plan from New York to

Halifax, he would be inserting the true, alternate destination of the cargo, according to the contract between the parties. It would, therefore, not be falsely altered.

2. It certainly would not be forged, since it would be his own document and it would for the same reason not be counterfeit.

3. The stowage plan, which is what Mr. Schnare was referring to as the document the union sees, has no connection with customs, but is simply used to find the goods to be discharged.

4. The section refers to smuggling and tax evasion. No effort was made to show Canadian law in this respect.

It appears, therefore, that the SINGAPORE TRADER could have discharged at Montreal, Quebec, Halifax and other ports, in addition to Valleyfield. We don't know about the other available ports since Colley Motorships admit they called only Valleyfield, Sorel, Quebec, through Paulsen (Paulsen, 347a, 367a) and Halifax and St. John, by Honegger (327a). And neither one mentioned the SINGAPORE TRADER cargo which contained the special stamp on the bill of lading.

It is interesting to note that both Honegger and Paulsen agree that if they knew what Walsh and Cote had said, they would have sent the ship to Quebec (329a-330a, 388a).

Even the testimony of Mr. Smith does not help appellants. He worked at a container terminal (223a) which would not have facilities for any cargo not packed in 20 or 40 foot vans. There is no proof that St. John can accommodate regular break-bulk cargo of the type on the SINGAPORE TRADER which would make it easy for him to say "Leave the ship where it is." If it had been a containership which was in question, maybe Mr. Smith would have taken it.

He went so far as to testify that any ship, "from any port", not only one which was strike-bound, would not be discharged (226a-227a). In view of all the other testimony in this case, this comment is unworthy of belief.

But even Mr. Smith did not know if diverted ships were discharged at St. John (228a) and he didn't remember anyone mentioning the SINGAPORE TRADER to him by name (232a).

All witnesses agree that if the ship were diverted at sea and not in a strike bound port, she would have been discharged. Since the manifest would still have had to be changed, it is clear there would be no illegal alteration. Coming from a strike bound port cannot make a legal act illegal.

If this court should find the trial court in error that Valleyfield could have taken this cargo, appellees request this Court to pass on the feasibility and availability of Quebec, Montreal and Halifax. It is appellees' position that those ports as well as Valleyfield could and should have been employed by appellants.

CONCLUSION

The Judgment Entered Herein Should Be Affirmed With Costs to Appellees.

Respectfully submitted,

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APPENDICES

APPENDIX A

(To Hong Kong)

WUINY 11118 1849 10/06
GANNET 66380
7803321"
HX3321 CONAVCO

GANNET 10/6/71
CHINA MARINE
HONG KONG

RE SINGAPORE TRADER

PRES. NIXON HAS INVOKED TAFT-HARTLEY ACT INJUNCTION ONLY AGAINST WEST COAST PORTS. WE FEAR THIS ACTION WILL MEAN INDEFINITELY PROLONGED STIPPAGE AT NEW YORK. WHILE ALWAYS POSSIBLE THEY MIGHT SETTLE, OUR BEST JUDGEMENT IN LIGHT OF PRESENT FACTS, IS THAT THEY WILL NOT.

CONSEQUENTLY, WE HAVE LOOKED FOR BEST ALTERNATE PORT AND HAVE GOT A FIRM COMMITMENT FROM DETROIT HARBOR TERMINAL, DETROIT MICHIGAN. WE RECOMMEND YOU ACCEPT, AND ASSURE YOU THAT WE WOULD TAKE THIS STEP IF VSL WAS OUR OWN, ALSO GIVE SAME RECOMMENDATION TO ANY OTHER OF OUR PRINCIPALS IN SAME SITUATION.

INSOFAR AS CANADIAN PORTS ARE CONCERNED, OUR AGENTS HAVE ADVISED AGAIN THAT ANY SUITABLE PORT SUCH AS ST. JOHN, HALIFAX, MONTREAL, WILL NOT ACCEPT THE VSL A/C UNION PROBLEMS. OTHER, SMALLER CANADIAN PORTS WHO DONT HAVE UNION PRLBLEMS ARE HOPELESSLY INADEQUATE IN WAREHOUSE SPACE, TRANSIT FACILITIES, ETC.

Appendix A

GREAT LAKES PORTS, CLEVELAND, DETROIT, ETC DO NOT HAVE I.L.A. LABOUR, AND DETROIT CAN ACCEPT VSL. OTHER PORTS ARE OVER-CROWDED AND REFUSED.

THERE WILL BE A SAVING TO YOU ON STEVEDORING ABOUT 5.00 PER MSMT TON, DETROIT STEVEDORE QUOTING DLRS 12.95 ALL PURPOSES, AGAINST NY RATE 18.00. WE ARE STILL TRYING ACCURATELY EST HOW MUCH DISCHARGED AT NY, BUT OUR GUESS AT LEAST 8000 TONS (IF NOT MORE) REMAINING.

THIS SAVING OF ABT 40000 DLRS WILL BE OFFSET BY COST OF SEAWAY TOLLS, FITTINGS, ETC WHICH WE EST ABT 11000 DLRS. WE BELV NET RESULT WILL BE TO YOUR BENEFIT FINANCIALLY. WE HV EXPLAINED SITUATION TO MR. STIFF AND MR. SHEN, WHO BOTH AGREE BEST PROCEDURE.

ACCOUNT NECESSITY TO MAKE CUSTOMS CLEARANCES, ETC WE MUST HAVE YOUR DECISION WITHOUT FAIL TOMOW MORNING, ORDER TO COMPLETE PREP AND SAIL TOMOW EVENING. IT IS NEC MAKE EARLIEST POSS ARRIVAL DETROIT AS THAT PORT IS INCREASINGLY CROWDED AND MUST ANSWER STEVEDORE AIRMAILING TOMOW.

MSG FROM CAPT QUOTE
BUNKERS ROB 6TH 521
UNQUOTE

HX3321 CONAVCO. . . . .
007 MINT

APPENDIX B

(From Hong Kong)

(Illegible) CONAVCO
HE1172 GANN UI

CONAVCO HONGKONG TELEX TO
GANNET FREIGHTING INC NEWYORK

OCT 11, 1971.

MR HERLIHY

SS SINGAPORE TRADER
WE THANK YOU FOR YOUR TELEX OF OCTOBER 9

PLS ADVISE ETA AT DETROIT ALSO ADVISE NAME ADDRESS AND CABLE ADDRESS TELEX NUMBER OF AGENTS AT DETROIT BY TELEX SOONEST

AS ALL BILLS OF LADING CLAUSED WITH A STRIKE CLAUSE THEREFORE WE CONSIDER ANY ADDITIONAL EXPENSES FOR PROCEEDING TO DETROIT FOR DISCHARGING BALANCE CARGO SHOULD BE FOR ACCOUNT OF CARGO OWNERS/ CARGO RECEIVERS AND SUCH "ADDITIONAL EXPENSES" SHALL INCLUDE:

(1) CANAL TOLLS AND EXPENSES FOR CALLING GREAT LAKE PORTS
(2) BUNKER FUEL OIL CONSUMED FOR EXTRA MILEAGE BETWEEN NEWYORK/DETROIT
(3) CREW WAGES AND INSURANCE PREMIUM
(4) AGENTS FEES AT DETROIT
(5) AND OTHER ASSOCIATED EXPENSES

FOR (1) WE SUGGEST THAT SAME BE COLLECTED FROM CARGO OWNERS/RECEIVERS ON ACTUAL AMOUNT CHARGED BY ST LAWRENCE CANAL OR GREAT LAKES AUTHORITIES ON PER TON BASIS

Appendix B

FOR (2) THRU (5) WE SUGGEST THAT WE CHARGE ADDITIONAL FREIGHT OF USDLS 3.00 PER TON FROM CARGO OWNERS/RECEIVERS ON ANY CARGOES DISCHARGED AT DETROIT

ALSO IN ADDITIONAL TO STRIKE CLAUSE OF THE BILL OF LADING CLAUSE 25 STIPULATES THAT "DELIVERY EXPENSES AT CURRENT RATE MUST BE PAID BY THE CONSIGNEES OF CARGO FOR THE USA"
THEREFORE PLS INSTRUCT DETROIT AGENTS TO CHARGE CARGO OWNERS/RECEIVERS FOR ANY EXPENSES IN CONNECTION WITH DELIVERY OF CARGO

PLS LET US HAVE YOUR COMMENTS ON ABOVE

AFTER DISCHARGE AT DETROIT VESSEL WILL PROCEED TO ST JOHN AND OTHER CANADIAN PORTS FOR LOADING NEWSPRINT WOODPULP AND OTHER GENERAL CARGOES FOR FAREAST PLS KEEP CLOSE CONTACT WITH ANTHONY SHEN FOR DETAILS OF CARGO AND LOADING PORT ROTATION

PLS ADVISE US IF ALL FREIGHT HAS BEEN COLLECTED FROM CONSIGNEES
IF NOT HOW MUCH STILL OUTSTANDING

WITH REFERENCE TO OUR TELEX OF 18TH SEPT PLS ADVISE IF YOU HAVE ALREADY COLLECTED USDLS 2633.50 FROM CARGO OWNERS/CONSIGNEES BEING BUNKER CHARGES FOR B/L 31, 170, 392, 392A, 392B, 436, 437 AND 438

REGARDS

CONAVCO

END OF MSG